

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

Fred E. Herzer, M.D.

Holder of License No. 16964
For the Practice of Allopathic Medicine
In the State of Arizona

Case No. MD-09-1398A

**ORDER FOR LETTER OF REPRIMAND
AND CONSENT TO THE SAME**

Fred E. Herzer, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 16964 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-09-1398A after receiving a complaint regarding Respondent's care and treatment of a 29 year-old female patient (MM) alleging inappropriate prescribing.

4. Pharmacy records revealed that from April 2008 through March 2009, Respondent prescribed multiple medications to MM, his daughter, including Clonazepam, Carisoprodol, Hydrocodone, Oxycodone, Acetaminophen-Cod, Somnote, Zolpidem, and Concerta. On May 6, 2009, MM committed suicide. According to the Police Report, there were several prescription bottles inside the room where MM was found along with some loose broken and unbroken capsules on the floor. According to the autopsy, the cause of

1 death was ascribed to asphyxia. The toxicology report indicated that MM's blood work was
2 positive for ethanol, antidepressants, and stimulants.

3 5. The standard of care prior to prescribing medication requires a physician to
4 perform a complete physical examination and obtain a list of other medications being
5 prescribed to the patient.

6 6. Respondent deviated from the standard of care by failing to perform a
7 completed physical examination and by failing to obtain a list of MM's other medications
8 before writing a prescription.

9 7. Some medications that Respondent prescribed are indicated for a short use.
10 Occasionally, alone, and more frequently in combination, these medications may lead to
11 drug-seeking behavior.

12 8. A physician is required to maintain adequate legible medical records
13 containing, at a minimum, sufficient information to identify the patient, support the
14 diagnosis, justify the treatment, accurately document the results, indicate advice and
15 cautionary warnings provided to the patient and provide sufficient information for another
16 practitioner to assume continuity of the patient's care at any point in the course of
17 treatment. A.R.S. §32-1401(2). Respondent's records were inadequate because he did not
18 keep a medical record for MM.

19 **CONCLUSIONS OF LAW**

20 1. The Board possesses jurisdiction over the subject matter hereof and over
21 Respondent.

22 2. The conduct and circumstances described above constitute unprofessional
23 conduct pursuant to A.R.S. §32-1401(27)(e) ("[f]ailing or refusing to maintain adequate
24 records on a patient").
25

1 4. The Order is not effective until approved by the Board and signed by its
2 Executive Director.

3 5. All admissions made by Respondent are solely for final disposition of this
4 matter and any subsequent related administrative proceedings or civil litigation involving
5 the Board and Respondent. Therefore, said admissions by Respondent are not intended
6 or made for any other use, such as in the context of another state or federal government
7 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
8 any other state or federal court.

9 6. Upon signing this agreement, and returning this document (or a copy thereof)
10 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
11 the Order. Respondent may not make any modifications to the document. Any
12 modifications to this original document are ineffective and void unless mutually approved
13 by the parties.

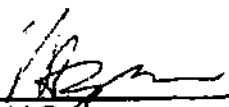
14 7. This Order is a public record that will be publicly disseminated as a formal
15 disciplinary action of the Board and will be reported to the National Practitioner's Data
16 Bank and on the Board's web site as a disciplinary action.

17 8. If any part of the Order is later declared void or otherwise unenforceable, the
18 remainder of the Order in its entirety shall remain in force and effect.

19 9. If the Board does not adopt this Order, Respondent will not assert as a
20 defense that the Board's consideration of the Order constitutes bias, prejudice,
21 prejudgment or other similar defense.

22 10. Any violation of this Order constitutes unprofessional conduct and may result
23 in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation,
24 consent agreement or stipulation issued or entered into by the board or its executive
25 director under this chapter") and 32-1451.

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Fred E. Herzer, M.D.

DATED: 4/22/10

EXECUTED COPY of the foregoing mailed
this 18 day of June, 2010 to:

Fred E. Herzer, M.D.
Address of Record

ORIGINAL of the foregoing filed
this 18 day of June, 2010 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258



Arizona Medical Board Staff